

CC:P&SI:TR-45-2068-91
BR8: [REDACTED]

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Director, Appeals Division
CC:AP

Assistant Chief Counsel
(Passthroughs & Special Industries) CC:PSI:8

Review of Denial of Request for Technical Advice
[REDACTED]

We have reviewed the file submitted by the Chief of Appeals, [REDACTED], and agree that there is no technical issue for which to request technical advice. Therefore, we agree that the denial of the taxpayer's request for technical advice may be upheld.

[REDACTED]
(b)(5)(AC)

The taxpayer made defective tax-free sales of trailers taxable under section 4051 of the Code to retailers who subsequently paid tax on their resale of those trailers. Because the taxpayer failed to obtain proper documentation of the retailers' right to purchase tax free, the taxpayer should have paid tax on those sales and the Service may properly assess the tax against the taxpayer. Although the retailers may claim refunds of the tax they paid, there is no guaranty that they will do so. Under section 6416(a) of the Code, refunds of tax under section 4051 may be allowed only if the person making the claim repays the amount of the tax to the ultimate purchaser or obtains the written consent of the ultimate purchaser to the refund. Because the retailers must pass on any amount refunded, they have no economic incentive to incur the administrative costs involved in preparing a refund claim. This is especially true in the case of sales to persons from whom repeat business cannot be expected.

Should the retailers claim refunds and reimburse their customers, the customers would receive a windfall. In the normal course of events, taxpayers pass the amount of the tax on to their customers as part of the price for the article. In post sale assessment situations, such as this, the taxpayers usually do not have any way of recouping the amount

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of the tax from the ultimate purchasers. (b)(5)(AC)

[REDACTED]

(b)(5)(AC)

[REDACTED]

(b)(5)(AC)

[REDACTED]

[REDACTED] of this office is familiar with this issue and
can be reached at [REDACTED].

[REDACTED]